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The Philosophy of Human Rights

The Philosophy
of Human Rights
Contemporary Controversies

Edited by
Gerhard Ernst
and
Jan-Christoph Heilinger

De Gruyter

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The moral demandingness of socioeconomic human rights

JAN-CHRISTOPH HEILINGER

This paper addresses the question whether excessive demands for moral agents speak against a moral framework such as socioeconomic human rights. In other words, is an account of human rights that embraces welfare rights unsound if it turns out to be extremely burdensome for moral agents? Section 1 of the paper analyses the relationship between human rights and the corresponding, potentially overdemanding duties and argues that not only institutions but also individual agents are addressed by these duties. Section 2 introduces the moral demandingness objection (MDO) as a meta-theoretical criterion to judge the soundness of a moral theory and shows the different ways in which a moral theory might demand more than agents can do or can be reasonably expected to do, particularly in the context of human rights. In the paper I focus on the example of the presumed human right to adequate food and its corresponding duties. I argue that excessive demands mirror the current circumstances of extreme but in principle preventable world poverty. Hence extremely burdensome demands should be taken neither as an argument against the moral theory of human welfare rights nor as a pre-emptive exculpation for agents failing to live up to the duties corresponding to these rights. However, obligations corresponding to welfare rights are not the only type of obligations for moral agents; hence moral agents should not always and exclusively strive to fulfill them.

1. Positive human rights-corresponding duties

1.1 The human right to basic necessities

Human rights are widely accepted as an attempt to formulate a minimal moral framework, transcending narrow local settings and time frames, to govern the living together of humans. Basic human rights protect dimensions of human lives that are of special importance since they

touch upon fundamental interests and the welfare of human agents. Think for example of the right to be free from arbitrary coercion, the right to participate in society, the right to basic means for survival, or the right to choose one's own religion. All these rights protect important elements of an individual's life, namely the ability to act autonomously, to engage in social relationships, to have secure subsistence, and to be culturally active. Because of the general importance of what they aim to protect, human rights are said to be held by *all* human beings; and as such they are supposed to be binding for agents who potentially have an impact on someone's human rights. If human rights protect fundamental interests and the welfare of individuals, their violation constitutes a severe moral wrong.

Hence because of the nature of human rights and their prescriptive implications for moral agents, a theory of human rights is fundamentally a moral framework, setting rules which moral agents – be it individuals or institutions – must abide by if they want to act morally. Such a wider, interactional view about the scope of human rights that includes different types of moral agents – individuals as well as governments and institutions – is opposed to a narrower, institutional account of human rights that excludes individuals and exclusively addresses institutions and their representatives. While the institutional view dominates the current debate about human rights, later on I will engage with the interactional view.

According to the “generation account” of the history of human rights (which should only be seen as describing a historical sequence and not as providing an evaluative hierarchy), one can differentiate three generations of human rights (cf. Vasak 1977). The first generation includes basic liberty rights – freedom of assembly, freedom of expression, etc. – as well as civil and political rights of participation. The second generation stipulates welfare rights, or social, economic, and cultural rights; among them a right to basic necessities, basic education, etc. Often they are positive rights to assistance, contrasting with the presumably exclusively negative rights of the first generation. The third generation of human rights provides a diverse list of rights including collective and group rights, a right to sustainability, to a healthy environment, etc. In the following, I will focus on the second generation of human rights, because here my question about the moral demandingness of human rights becomes particularly salient: it addresses fundamental needs and interests of human beings which, however, go beyond the apparently

less controversial negative rights of the first generation without reaching the even more controversial dimension of the third generation.

One prominent example of a basic human right of the second generation is the right to an “adequate standard of living” found in article 25 of the 1948 Universal Declaration of Human Rights and in article 11 of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 11 explicitly includes a right to basic necessities such as food. In the words of Jean Ziegler, the former UN Special Rapporteur on the right to food, this human right means

“to have regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective fulfilling and dignified life free of fear.” (Ziegler 2001, 2)

This vision includes elements that are extremely unlikely to be widely realized any time soon for many people. Furthermore, to demand that food should match cultural traditions seems secondary given the extreme lack of food that would secure sheer survival. However, while it may be a challenge to properly define “adequate” food and while one might want to question certain specifications, “adequate” food undisputedly includes there being enough food available to guarantee survival. There is a strong fundamental interest for human agents to be adequately fed, because this seems to be a precondition for engaging into any kind of human activity and moreover a precondition for enjoying the first generation liberty rights. To be free from starvation is hence a particularly pressing and immediate human right.

In our current world, many human beings live under conditions of severe poverty. Every year, some 8 million humans die prematurely of hunger (Sachs 2005, 1) and taken together 18 million die prematurely of poverty-related causes (Pogge 2007, 51). Since the right to basic necessities is said to be a universal human right, held by all and not only by some humans or under certain conditions, in each individual case of hunger the human right to basic necessities is disrespected and a *moral wrong* occurs.

It is important to keep in mind that it is far from impossible to eradicate world poverty and world hunger (cf. e.g. Sachs 2005), given the amount of food available and both the organizational capacities of modern societies and their existing financial means. It would certainly involve financial commitment, intense preventive action and a long-

term engagement to be successful. Yet world poverty is not an unchangeable fact that has to be taken for granted, even if the demands and the challenges of eradicating it would be high.

1.2 Rights and corresponding duties

One prominent problem with declaring universal human rights is that it is often unclear who has to do what to secure these rights or who can be held responsible for preventing human rights violations from happening. Griffin argues in a straightforward way that there is a clear match between rights and obligations, though specifying exactly the content of a human right may be difficult:

“The content of a human right is also the content of the corresponding duty. What one party may demand, as of human right, another party has some sort of obligation to supply. We have only to know the content of human rights. But deciding that, of course, is not always easy.” (Griffin 2008, 97)

Yet even if we agree that there is, e. g., a human right to adequate food, the answer to the question about the corresponding obligation is more complicated than Griffin seems to suggest. After the initial intuitive reaction that *someone* should be doing *something* about world hunger, the difficulties begin. Often it is impossible to identify a human rights violator who directly causes the moral wrong in question. Think of structural human rights violations such as world hunger. While in some cases bad governance or financial speculations with basic food might be thought to have a substantial impact on food shortage, in most cases simple causal attributions of responsibility fail. Who has which obligation in these cases? This question is crucial, since without counterpart obligations, basic human rights seem to become futile.

If we stipulate human rights without being specific about corresponding duties, they turn out to be sheer manifesto rights, describing some ideal without attributing responsibility for how to realize this ideal (cf. Feinberg 1980). O’Neill, for example, is very critical of such manifesto rights and hence makes the determination of rights-corresponding duties and their holders a condition for a meaningful concept of universal rights. She argues that unless we are able to specify counterpart obligations, all talk of universal rights should be avoided (O’Neill 2005, 432–433).

To be as specific as possible about determining rights-corresponding duties, we have to inquire into the relationship between rights and duties. However, given the complexity of the web of human interaction in which human rights are located – and respected or violated – and given the generality of basic human rights, the answer to the question of who has which duty will certainly not be simple. There might be several layers of obligations, organized according to different potential agents. After all, human rights do not result from a precise contract made between two individuals about, say, purchasing something, which would be specifically about the parties involved and their rights and duties explicitly agreed upon. So it might be that only a basic degree of specificity is possible when it comes to defining the human rights-corresponding duties and the duty bearers.

So, how to further enquire into the duties that correspond to human rights? One influential general definition of a right has been offered by Joseph Raz:

“‘X has a right’ if and only if X can have rights and, other things being equal, an aspect of X’s well-being (his interest) is a sufficient reason for holding some other person(s) to be under a duty.” (Raz 1986, 166)

Following Raz, the legitimate interests of an individual justify rights which in consequence justify the corresponding duties. “Typically rights are established by arguments about the value of having them. Their existence depends on there being interests whose existence warrants holding others subject to duties to protect and promote them.” (Raz 2007, 17). For Raz the right is prior and consequently gives rise to a corresponding duty. Such a hierarchical account however is more specific about rights than it can be about the derived duties. An alternative account that puts rights and duties on the same level would instead stress their “correspondence”, and take rights and duties to refer to different aspects of a single normative relation existing between human agents. Here one could say that rights and duties are correlative or corresponding conclusions of one moral argument made about a relation between a potential agent and a potential right (cf. Holmgren 1985).

So far, I have spoken about rights generally; talking about human rights specifically touches upon a somewhat different debate. Raz’s own understanding of human rights, for example, is more specific than his general account of rights.¹ However, following a moral under-

1 According to his “political” view Raz “regards human rights as rights which are

standing of human rights, I claim that in the case of human rights as well the correspondence relationship between rights and duties should be understood as them being correlative conclusions of moral judgments about the legitimate interests of human agents.

But how to be specific about the corresponding duties, if one has already made the moral argument that some dimension of human lives is sufficiently important to justify a human right to it? Think for example about the right to the physical integrity of one's body. Here clearly no one is allowed to disrespect this right and, say, torture someone. Hence all agents have a clearly identifiable duty to refrain from doing something. No one whatsoever is allowed to interfere with this fundamental right to physical integrity, because the interest in physical integrity – as a precondition and an essential element of human lives – is seen as a sufficient reason to urge others to omit certain types of action.

Things are more complicated in the case of second generation human rights such as the right to adequate food. Here too the interest in being adequately fed is legitimate because not suffering from hunger constitutes a fundamental element of human well-being, but the identification of a corresponding duty bearer is less obvious. In some cases it is possible to identify someone directly causing the hunger of others – say through stealing or directly withholding available resources. However, only some cases are of this relatively simple form. Under the current global conditions of huge inequalities in access to food, the basic rights of some are clearly being violated while it is not so easy to determine whether someone has directly caused this shortage. Assuming that we are not able to identify anyone causally responsible for some people's shortage of food, what does the basic human right refer to in these cases? Does it point to nothing?

Following O'Neill, I start from the assumption that rights without corresponding duties are empty. So we should strive to identify duties in these cases as well where negative duties of omitting certain types of action will not suffice to stop the violation of a right from taking place.² What is needed here is positive action on the part of some

to be given institutional recognition, rights which transcend private morality" (Raz 2007, 17). This is a specific understanding of human rights, distinguished from other types of rights.

2 That negative duties alone may not be sufficient for ending problems is an important reason not to exclusively follow Pogge's important insight that indeed

other agents. If human rights were to exclude any such positive corresponding duties from their scope they would immediately become ineffective and futile.

The demand to include positive duties among the rights-corresponding duties is necessary not only for the welfare rights, but equally for first generation liberty rights. Although some have argued that liberty rights only correspond to duties of omission, in my view they also constitute positive duties. Securing freedom of assembly and speech demands in many cases positive action like providing a police force and a juridical system to guarantee that no one is unduly coerced (cf. Griffin 2008, 96). Relying on negative duties alone will fail.³ Shue argues in the same direction when he suggests that generally “three types of duties correlate” with “every basic right”, including liberty as well as subsistence rights like the right to food: “I. Duties to *avoid* depriving. II. Duties to *protect* from deprivation. III. Duties to *aid* the deprived.” (Shue 1996, 52).

Nevertheless it is especially difficult to identify duty holders for second generation human rights. O’Neill has rightly argued: “It is plausible to think that rights not to be killed or to speak freely are matched by and require universal obligations not to kill or not to obstruct free speech; but a universal right to food cannot be simply matched by a universal obligation to provide an aliquot morsel of food” (O’Neill 2000, 135). With this she certainly stresses an important point, but no one has claimed that it would be a simple task to precisely identify the matching obligation for a given right. If one accepts O’Neill’s criticism of sheer “manifesto” rights – well-meant formulations of admirable aspirations rather than claimable rights – and allows talk about basic rights only under the condition that we can specify counterpart obligations, the task of precisely identifying the holders of rights-corresponding duties and the exact extent of these duties only becomes even more urgent.

we can identify many of the duties that correspond to rights violations as negative (Pogge 2008).

3 In fact, given the conditions of massive inequality of human beings – some are less privileged than others in potentially different ways – liberty taken alone will often turn out to be suppressive and only rights and entitlements will be liberating.

1.3 Duty bearers

One answer to the question of who bears the human rights-corresponding duties is given by the official human rights documents themselves. Article 11 of the CESCER claims that there is a positive duty to provide enough food and stipulates that the holders of this positive duty are the states who signed the covenant:

“The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international cooperation, the measures, including specific programs, which are needed: (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.”

So here, the states declaring the human right to adequate food take themselves to be responsible for positive measures that meet the needs of those suffering from hunger and lack of adequate food. However, are states the sole holders of human rights-corresponding duties? Are individuals only indirectly involved in securing these basic rights, e. g. by paying taxes to or working directly for governments who then constitute the international covenant? Or are there some rights-corresponding moral duties that affect individuals independent of institutional agreements?

Some argue indeed that only official institutions bear human rights-corresponding duties. Such a political or official view of human rights has been defended e. g. by Charles Beitz, who understands human rights as “standards for domestic institutions whose satisfaction is a matter of international concern” (Beitz 2009, 128). From this point of view both negative and positive duties are held by institutions and, generally, there is no *personal* or *individual* human rights-corresponding duty to care for the needy or to guarantee fair trials for everyone. If a human rights violation takes place the responsibility to act lies with an official institution. “Nonofficial” individuals may – at best – have a secondary or indirect duty to support institutions in meeting their human rights-corresponding duty, e. g. through paying taxes or through exerting pressure on governments, or to help create institutions that in consequence

will be able to meet rights-corresponding duties.⁴ However, the primary duty lies with the institution.

Others argue that – besides official institutions – individuals also have a human rights-corresponding duty for positive action. To talk of universal human rights means on this view that they are, as Griffin has it, “doubly universal”, that they are claims “of all human agents against all other human agents” (Griffin 2008, 177). The difference between such an “interpersonal” or “interactional” view and the “political” or “institutional” view already mentioned is the disputed duty of individuals, while both views agree on the duty of institutions. Such a wider, interactional view that would allocate duties to both individuals and officials is also acknowledged, for example, in Nickel’s definition of human rights. Generally a defender of the institutional view, he argues that human rights “are political norms dealing *mainly* with how people should be treated by their governments and institutions. They are not ordinary moral norms applying *mainly* to interpersonal conduct.” (Nickel 2010, my italics). With this he stresses the primary focus of human rights and corresponding duties on states and institutions. However, the possibility that individuals might have human rights-corresponding duties too is not ruled out, even if it will be only in a non-ordinary way.

Also Thomas Pogge, generally an adherent to the political view that imposes duties on institutions, has prominently argued for individuals having indirectly *negative* duties of omission in the context of human rights violations (Pogge 2008, 67). In the following, I will take this a step further and engage with the not undisputed assumption that human rights also have corresponding individual *positive* duties.

I defend an interactional understanding of human rights, mainly because, even if they have a special status as codified rights, they ultimately strive to express a basic morality that is to be protected by legal arrangements. Another reason why individuals should also be seen as bearers of rights-dependent negative and positive obligations, especially in the context of the right to adequate food, is the following: Given the utter urgency of the matter – according to the frequent, ongoing, ex-

4 This is how argue e.g. Pogge 2008 or Caney 2007. “All persons have a duty to bring about and maintain institutions that ensure that persons can enjoy their human rights.” (Caney 2007, 287). – Of course beyond human rights-dependent duties individuals also have *moral* duties e.g. not to kill or to help those in need, but the political account strictly differentiates between *moral* and *political* rights and duties.

treme violating of fundamental rights – the fact that one *can* do something to stop a severe moral wrong from going on may *prima facie* suffice to create a corresponding duty to do so. Ashford argues in a similar way that the responsibility for fulfilling both positive and negative obligations towards both compatriots and foreigners ultimately lies with every agent who is able to do so (Ashford 2007). In other words: sheer ability to stop moral wrongs from taking place generates under certain circumstances moral reasons that ultimately might take the shape of duties.⁵ Another reason to see individuals as bearers of human rights-corresponding duties is that institutions are ultimately shaped by or constituted by individuals. They are never independent of the individuals who made and run them. From this perspective the difference between institutions and individuals would become a question of degree.

Against this, one might argue that an account of individuals bearing human rights-corresponding duties relies on an undue confusion of moral duties and human rights-corresponding duties; the first one simply being the result of some general moral theory directed at individual behavior, the second simply stemming from the particular human rights framework focusing on institutional obligations. However, this objection only makes sense within the narrower political view, where human rights are defined exclusively as a political instrument obligating institutions and their representatives. If alongside their undisputed political function one also wants to attribute to human rights a degree of universality that goes beyond the realm of codified statements, one has to allow for their extension to include individual agents as bearers of human rights-corresponding duties.⁶

5 Cf. Griffin, who argues for ability being one among several reason-generating considerations (Griffin 2009, 102) or Sen who claims: “Human rights generate reasons for action for agents who are in a position to help in the promoting or safeguarding of the underlying freedoms. [...] In particular, the acceptance of imperfect obligations goes beyond volunteered charity or elective virtues.” (Sen 2004, 319). Taking up insights from Young, one could also argue that being able to help and have a positive impact on someone’s life already constitutes a sufficient degree of social connection, i. e. a relationship including moral obligations and responsibility (cf. Young 2006).

6 While I defend the interactional view about human rights, I do not claim that there is more truth in one view than the other. But if the ultimate measure for moral and human rights theories consists in improving our living together insofar as fundamental interests are respected and the well-being of human beings

However, if there are universal duties for individuals who are in a position to do something to prevent a violation of human rights from happening, and if the current violation of human rights is extreme, is the moral burden posed on the agents not too high? Can we, the relatively well-off in the affluent countries, – on the grounds of a doubly universal, interactional account of human rights that allows all agents to make claims on all other agents – reasonably be said to be the bearers of corresponding duties to the rights of the 30,000 people who die every day⁷ from poverty-related causes? Would an account of human rights that puts such a high burden on individual agents not be overly demanding and hence unsound?

2. Overdemandingness and welfare-rights

When we seek to determine the exact extent of rights-corresponding obligations, one major concern in the background is the fear that a moral theory that poses unreasonably excessive demands may become itself unreasonable and hence unsustainable. Call this the Moral Demandingness Objection (MDO) against a moral theory. This objection, as a meta-theoretical criterion that evaluates the soundness of a theory according to its degree of demandingness, can also be put forward against a theory of welfare rights. In the following I will analyze the different ways in which a moral theory may demand “too much” from moral agents and ask what might result from this diagnosis for a moral theory like an account of socioeconomic rights.

The idea that it is unreasonable to demand more from a moral agent than she can possibly fulfill or can be reasonably expected to fulfill is a widely accepted principle in moral reasoning from antiquity – “*ultra posse nemo obligatur*” – to modern time – “ought implies can.” The core idea of this principle is that it is a necessary condition of being morally obliged to do something that we are *able* to do it or can be *reasonably expected* to do it.

Most often, the MDO is discussed as an argument against consequentialism. Exclusively following an algorithm to maximize the good

is promoted, a too narrow political view does not exhaust all the possibilities for improvement.

7 And even more die under conditions of an acute famine like the one currently happening in Somalia and the neighboring countries.

is said to be no plausible and appropriate way (Williams 1981, 14–19; O'Neill 2009, 62–63)⁸ of moral reasoning for human agents who live their lives embedded in complex and ambiguous social settings full of special relations of concern and particular obligations towards some (cf. also Scheffler 2010). Ultimately a maximizing consequentialism will result in implausibly high demands that even motivated agents will necessarily fail to fulfill. While the MDO has been mainly discussed in this consequentialist context,⁹ it also proves important for evaluating the soundness of rights-corresponding duties in rights-based moral theories such as the one in question here.

2.1 Three types of the moral demandingness objection (MDO)

What does it mean to say that a moral theory is too demanding? The MDO can appear in different forms. A moral theory can be (1) technically overdemanding, (2) motivationally or psychologically overdemanding or (3) theoretically overdemanding.

Technical overdemandingness can result first from the epistemic challenge that our knowledge and understanding of a given complex situation or setting in which we have to act is insufficient to make a proper decision. The uncertainty resulting from indeterminate, complex real world scenarios makes moral obligations potentially overdemanding. If I just didn't know that I could have done something or if I am merely incapable of determining the proper moral action, a theory that asks me to perform the morally correct action can be said to be unreasonably demanding. Griffin for example argues that there are "limits [...] to human understanding" and continues:

"Sometimes we are able to calculate fairly reliable the good and bad consequences of large-scale, long-term social arrangements, but sometimes we are not. And our failures in understanding are often not peripheral to morality but at its centre and great enough to leave us with no belief upon which we should be willing to base our lives." (Griffin 2008, 98).

8 O'Neills position on the demands of maximizing consequentialism is even more radical, since she claims that the resulting demands in the end only appear to be overdemanding, while ultimately they are not demanding enough, since they are nothing but empty formalism (O'Neill 2009, 62).

9 For a critical discussion of this see Sobel 2007.

A second form of technical overdemandingness obtains when different actions that have been simultaneously identified as morally demanded are mutually exclusive and for this reason impossible to perform. Such contradictory demands could result from equally urgent moral claims made by several individuals e.g. to help them in severe distress in a situation where it is unfeasible for the agent to meet all of these claims simultaneously. If there were a moral obligation to help them all, this would place an excessive burden on moral agents that they would not be able to meet.

This second form of technical overdemandingness can also take the form of identifying an incommensurate task for an individual – such as saving the world from poverty. Here the overdemandingness consists in the setting of a goal that is incongruent with the abilities of an individual agent such that it seems to be unreasonable to place this moral demand on an individual.

A second type of moral overdemandingness is *motivational* or *psychological*. One form of this motivational or psychological overdemandingness can obtain if, for example, meeting some obligations would be extremely costly for moral agents and require huge sacrifices. To help people in severe distress we would have to abandon our private projects or some relationships of special concern to people nearer and dearer who happen to be much better off than those in severe distress. Yet as Scheffler has argued, there are several forms of “reasonable partiality”, such as obligations resulting from personal relationships, membership in communities or personal projects (Scheffler 2010). It might be inappropriate and overdemanding to ask moral agents to jettison these reasonable forms of partiality to meet some moral obligation.¹⁰

Moral agents who did neglect special relationships in order to follow the duties stipulated by a given theory might become impersonal duty performers or utility maximizers (Williams 1981, 14). A moral theory requiring inhumane, machine-like agents would clearly not fit human psychology or human nature, because it would be motivationally incommensurate. It cannot reasonably be expected of a moral agent, so the argument goes, to give up all personal relationships and private projects simply in order to meet the demands of morality.

10 Another form of this argument might stress the marginal utility that is given in cases where an agent has to invest many resources or has to make huge sacrifices in order to realize a relatively small improvement for others.

Furthermore, it might be said to be psychologically overdemanding for an agent if *she particularly* should feel obligated to perform some kind of moral action that millions of other agents – who might be equally obligated – fail to perform. Under the conditions of general non-compliance with moral obligations the general obligations of individuals could become weaker and it might appear to be unreasonable to demand that individuals fully comply with moral duties under conditions of general non-compliance. Consider the following example: If many or most relatively affluent individuals do not donate (or do not donate enough), the general duty of helping the needy will certainly not be fulfilled. It would, from the point of view presented here, be motivationally overdemanding to ask moral agents to do more than their due share (in order to avoid overall failure); and it would be motivationally overdemanding for them to engage into the activity in the first place in order to do their share, since failure is certain.¹¹

Moral theories can also be *theoretically* overdemanding, that is, self-defeating within the boundaries of the given theory. If by following the moral demands of a given theory the moral agent will experience or bring about consequences that contradict the presupposed values of this theory, the theory itself demands something of someone to avoid the same thing for someone else. If a right to adequate food asks all moral agents to engage in fighting hunger, a theory demanding actions that bring the agents themselves into severe poverty would be overdemanding because self-defeating. Another example of this pattern can be found in the above-mentioned cases of psychological overdemandingness, where agents might be asked to sacrifice their valuable relationships in order to meet moral duties. If the moral theory also attributes value to relationships (and not exclusively to brute survival) then sacrificing all relationships in order to dedicate one's life exclusively to fighting world poverty is at odds with the declared values of the theory.

Generally, the possibility of iteration of moral demands can point to another theoretical challenge for a moral theory. If an agent is obligated to perform some kind of action that can be reasonably expected from her such as donating 10 Euros to charity, why should she not be obliged to do so repeatedly? Once one duty has been fulfilled, the next one

11 Such claims have been discussed e. g. by Ashford, who argues that non-compliance with moral rules on the part of some make the obligations for others even more onerous (Ashford 2007, 211). See also the discussion in Murphy 2000 and in Miller 2011.

looms. In these cases the continuous application of a moral theory ultimately places very different and potentially excessive demands on agents.

2.2 The impact of the moral demandingness objection on socioeconomic rights

Do the different forms of the MDO speak against welfare rights and corresponding duties? Initially, one has to accept that much speaks in favor of the soundness of the MDO. If the existing moral duties are either impossible to determine or impossible to realize (technically overdemanding), alien to human lives (psychologically overdemanding), or self-defeating (theoretically overdemanding), this proves to be a problem for a moral theory like the account of welfare rights and corresponding duties. A theory generating excessive and unrealistic obligations might turn out to be empty insofar as it is little more than wishful thinking, a well-meant but futile formulation of remote and potentially even contradictory goals.

Indeed the different forms of potential overdemandingness seem to apply to welfare rights and corresponding duties. They all point to problems that regularly come up whenever one attempts to identify the duties corresponding to socioeconomic rights. It might be difficult to fully understand the complex connections that lead to human rights violations so that it becomes unclear exactly which relation of duty exists. The resulting responsibilities might exclude one another or simply go beyond what is realistically feasible for agents. The sacrifices demanded may be inconvenient or even excessive. The duties may have a negative impact on the range of “innocent” choices available, that is they may significantly restrict the options for acting in a morally acceptable way. They even may endanger other dimensions of our lives that we cherish or hold in high, potentially even moral esteem. All this shows why we do indeed have reason to say that the demands generated by socioeconomic rights are excessively demanding, at least *prima facie*.

If one thinks that excessive demands have to be avoided because they are fatal for a moral theory, there are different ways to respond to this diagnosis. I will mention several of them before showing which problems are connected with each of them. In conclusion I will argue for the claim that it does not necessarily speak against a theory that it generates certain forms of excessive demands.

First, one could restrict oneself exclusively to talking about rights. One would then simply stay agnostic and silent on the question of whether agents have any rights-corresponding duties. A second option consists in restricting the rights to such a degree that any corresponding duties do not lead to the MDO. If fighting world poverty would be too demanding for moral agents, this would exclude the existence of a human right to adequate food. A third possibility consists in granting the existence of rights while restricting the corresponding obligations to an acceptable degree. This would give human rights the status of goals, ideals or remote ends to be achieved – or perhaps not – at some later point in the future. In these cases the corresponding duties would be trimmed down to a technically, motivationally, and theoretically acceptable degree.

In all three cases – agnosticism about duties, restricting rights, restricting obligations – the MDO provides a *pre-emptive exculpation of moral agents* who are thus exempted from many moral obligations. But should we endorse such a practice of pre-emptive exculpation? Or does it generate problems we should wish to avoid by accepting the overdemandingness of welfare rights?

2.3 Challenging the moral demandingness objection

In my view, the three possible responses to taking the MDO as a serious argument against the soundness of a moral theory lead to unacceptable consequences. *Agnosticism* about corresponding duties makes human rights claims nothing but empty talk. If we do not say a word about who might have which corresponding obligations, any talk about human rights would be empty and nobody who could potentially do something about it would feel “a call of moral duty”. In looking exclusively at the rights-side of the two-sided relationship, we risk losing half of the picture. Hence agnosticism simply neglects an admittedly difficult but crucial element of the task of securing the legitimate interests of human agents. This, as a consequence, also makes the talk of rights idle.

Restricting the rights to make them fit an acceptable or convenient degree of obligations would be a revisionary approach. Imagine the following argument: “Striving to secure survival for all would place too extreme a burden on some. Hence there cannot be such a human right.” This response introduces a hierarchy where instead we should show a correspondence between matching elements. It would be epis-

temically questionable to reduce rights in accordance with an external standard – external to the relation of correspondence between rights and duties – of what agents can do or can be reasonably be expected to do. The reason for accepting a right and a corresponding duty is the basic interest of a human individual in her fundamental well-being that has been accepted as legitimate, and not the convenience for a corresponding duty bearer nor the determination of how much can be reasonably asked of someone.

Of course, one has to enquire whether there are good reasons to change the understanding of human rights based on the interests and welfare of human agents and not on the convenience or realizability of corresponding obligations. One way out of this dilemma seems to be to focus on *first* generation human rights exclusively, which appear to be much less burdensome, and leave out any second generation human rights that call for more positive action. But, as already mentioned above, the seemingly undisputed set of liberty rights might also give rise to duties for individuals that go beyond duties of omission. Think for example of the duty to stop first generation human rights violations through humanitarian interventions or to secure a functional legal system in a country to guarantee individuals their right to a fair trial. If we were to avoid potentially excessive demands resulting from positive duties, then for the same reasons we would also have to object to first generation liberty-rights and not just second generation welfare-rights. Therefore we see that if we restrict rights for reasons of overdemandingness it potentially calls into question all human rights, independently of their generation, because a potentially overdemanding positive moral duty might correspond to all human rights.

The third approach to *moderate* rights-corresponding *obligations* also seems problematic. Trimming down the obligations to an acceptable degree would weaken the basic rights significantly and diminish them to the degree that they become incapable of securing basic elements of human welfare. If in cases where we think that it is overdemanding for potential agents to save someone in severe distress the right of the suffering person simply has no addressee or corresponding duty bearer, the right as such degenerates. The understanding of rights and duties as corresponding to one another means we cannot modify one without impacting the other.

Again, it is important to identify the epistemic standard we would be using if we were to cut down the degree of an obligation. The standard of convenience would again be external to the bipolar relation of

rights and duties. Hence a loosening of the correspondence between rights and obligations endangers the entire human rights project.

So in all three responses to the MDO we face the severe problem that human rights talk *per se* might become empty or vain if trimmed down to the degree at which it is not too demanding for moral agents. However, the degree of demandingness for a rights-corresponding duty holder might seem to be a secondary or even external standard compared to the initial goal of human rights talk, which consists in securing the welfare and basic interests of individuals that have been accepted as significant and important. Hence the adequate standard of judgment about human rights is not the degree of the resulting demandingness, but rather the importance of the protected dimension of a human life.

From the perspective of a welfare- or interest-based approach to human rights, the response to the MDO is twofold. On the one hand we have to accept that the demands of welfare rights can turn out to be excessive; on the other hand we cannot find a way to restrict the rights-corresponding duties without endangering the basic interests. That is why the challenge lies instead in finding an appropriate way of dealing with overdemandingness.

A general observation may be in order here. Evidently, moral theories essentially become extremely demanding under non-ideal conditions and under conditions of acute crisis.¹² In these circumstances overdemandingness might even be an inherent feature of morality: it could simply be “part of the game” that to act morally is an extremely demanding undertaking. Hence the reproach of being extremely demanding, and potentially too demanding, will be naturally raised against most types of moral theories. Maybe this is why in the history of ethics many proponents of different moral theories seemed to agree on the importance of the “ought implies can” principle. Restricting the demandingness of morality seems appropriate and important for most moral theories, as – in face of non-ideal conditions – all of them are in need of some moderating element if they are to avoid the consequence that even well-intentioned moral agents continuously fail.

12 Pogge has argued that the individual burden to fight world poverty, if distributed fairly among all possible agents, would be non-excessive (Pogge 2008). Whether this estimation is true is difficult to determine. However, under conditions of non-compliance the burden for the individual will surely be excessive.

The question, however, is what we should reasonably expect from a moral theory, e. g. from a theory of human rights, and whether the continuous moral failure of agents under non-ideal conditions really is a flaw of a theory. If the main task of a moral theory consists in defining what moral agents can be reasonably expected to do, the MDO might apply and an overdemanding theory might be said to be unsound. After all, the limits of human knowledge and human psychological and physical ability are somewhat fixed.¹³ But if a moral theory is about protecting legitimate interests and needs of individuals and securing their welfare, the primary focus of concern lies not on what moral agents can be *reasonably expected to do* but on what moral agents *should do*. This view can be called an “ethics-first” approach, because it places the focus of concern on what should be done instead of on what human agents can be realistically expected to do.¹⁴ In such an ethics-first account the MDO only comes up at a much later point, to a subordinate degree and in a different form.

In my view the ethics-first approach properly describes the primary task of a moral theory. I have argued that the moral demands for agents are somewhat independent of the given concrete abilities or reasonable expectations for the moral agent. The demands of morality are extremely high, often even unreasonably high. This however seems to be the result of the existence of distress in the world and not a result of flaws in a moral theory. I would rather put it the other way round: If the degree of moral obligations in a world like ours were convenient, or easy to meet, that would be all the worse for the theory. Hence overdemandingness in moral matters has to be accepted.

Perhaps others will have different feelings about this case. But if one were to accept the overdemandingness of moral theories, then the soundness of moral theories could be secured even if they were overde-

13 Nevertheless one should not underestimate the influence of e. g. education on the motivational capacities of individuals. Cf. Scheffler: “What morality demands depends on the state of the world in morally relevant respects, and what people are motivated to do depends on how they have been educated and socialized; and these factors in turn are dependent, in obvious ways, on the structure and functioning of society.” (Scheffler 1994, 4).

14 The term “ethics first” is from Raymond Geuss, who is critical of such an ideal theory approach (Geuss 2008, 8). My position is somewhat different from his: While I agree with much in his critical diagnosis of ideal theory, I am nevertheless convinced that legitimate moral claims and rights are independent from the question of their realizability.

manding. The only price to pay is the perhaps undesirable but probably apt insight that even engaged and well-intentioned moral agents are not perfect and continuously fail in moral regards. Yet, should this be a problem for a moral theory? For several reasons – that go back to my prior arguments about the different dimensions of the MDO – I do not think so.

Some say that *motivational* or *psychological* overdemandingness and the corresponding bad conscience of moral agents make morality unattractive and scare away potential moral agents from following the demands of morality. This seems to be a debatable empirical question about the motivational attitude of agents towards an extremely challenging task.¹⁵ One could also argue – quite contrary to this claim – that lowering the standards of demandingness impedes existing motivations to act. However, as an empirical question this is not of prior theoretical concern for moral philosophy, which tries to identify demands of morality not primarily according to the motivational capacities of given agents but according to what one reasonably identifies as the morally right or wrong action.

Others would argue that permanent psychological and motivational overdemandingness shows how a given moral theory is not fit for human agents. Again, I would say that this does not provide a substantial problem. Overdemandingness only shows how much need for moral action currently exists in the world. Hence, instead of claiming that such a moral theory would not be fit to human beings, one could argue that an overdemanding theory fits the state of affairs in our current world particularly well. After all, under current conditions of world poverty, e.g., we cannot expect a moral theory to be convenient. This however might change in a different world. So *motivational* overdemandingness can be seen as an acceptable because appropriate feature of a moral theory in the face of the moral wrongs in our world.

How about *technical* overdemandingness? Do conditions of uncertainty or the problem of unfeasibility really speak against a moral obligation to do something? This of course depends upon what you understand a moral obligation to be. According to my view, the question “Who should do what?” is reasonable even if it cannot be answered with perfect accuracy. In many cases there may be insurmountable epistemic difficulties in determining the right action, but the idea that there

15 Psychological research about external influences on motivation and decision-making will be necessary here. Cf. e.g. Ryan/Deci 2000.

is only one morally right action is generally misleading. Instead, there may be different sets of morally demanded actions that – while being mutually exclusive – nevertheless are morally demanded, maybe even to the same degree. However, I cannot see why this form of epistemic uncertainty should speak against a moral theory as such. For the subject matter of ethics, only a lower degree of precision and unambiguity can be reasonably expected, as Aristotle had already argued. Furthermore, if one is incapable of performing some of the demanded actions, this does not affect whether they should be done. Incapability only gives a moral agent a reason or an explanation for not doing them. In these cases the agent would fail to perform a morally demanded action; however, she might not fail – or fail again – concerning another morally demanded action. If one takes a moral obligation to be a moral judgment about the moral quality of an action in question, then the actual unfeasibility of this action does not affect this quality. The unfeasibility – as the uncertainty mentioned before – does not provide a substantial argument against the soundness of a moral theory.

Now what about *theoretical* overdemandingness? Can a moral theory reasonably demand that people sacrifice things of equal moral value in their own lives in order to fight a moral wrong somewhere else? This objection has to be carefully scrutinized. No moral theory I am familiar with explicitly demands something like this. Even Peter Singer's extremely demanding suggestion about moral obligations in face of world poverty does not say that a moral agent should cause himself to sink below the level of well-being that he is attempting to remedy. The underlying distinction to be made here is between a moral obligation on the one hand and actually doing something on the other. Being morally obligated to do something is having a moral reason for performing some action. Certainly we have good reasons to act in order, say, to fight world poverty, and this obligation is extremely demanding, given the extreme suffering of others. Regarding the theoretical overdemandingness it is important to see that the moral obligation to help, that is, the existence of a moral reason to help, persists even in cases where we would have to sacrifice our own lives and well-being or neglect our other obligations. But it will be *one* reason among many that is generated by the (human-rights-secured) needs of others, *not the only* reason we have to guide our lives. And it has not been claimed that we should always follow each of the moral obligations we identify in the complex lives we lead, even if each of them constitutes a strong reason for doing so. Theoretical overdemandingness may be an acceptable, even a neces-

sary feature of a moral theory that is based in a world of severe, preventable suffering in which moral agents nevertheless are engaged in many different relations and activities. What we have to avoid is focusing all our moral concern and reasoning on only one dimension of our multi-dimensional, active human lives.

3. The demandingness of morality

I have argued that some obligations resulting from a moral theory of welfare rights are extremely or even unreasonably demanding. Rights-corresponding duties can be technically, psychologically, and theoretically overdemanding. I take such overdemandingness of welfare rights to be rather a result of the state of the world in which massive violations of human rights take place and cause hunger, poverty, and suffering. Overdemandingness under these conditions matches the excessive distress and should not be seen as a flaw of a theory of human rights. Hence the options of being silent on rights-corresponding duties, restricting these duties or even restricting the rights are not sufficiently supported by the MDO.

Yet, accepting these extreme, even unreasonable obligations is only one element in the general undertaking of moral reasoning in order to allow for considered moral action. These obligations are reasons that speak in favor of some action. However, different obligations arise in complex human lives and will have to be weighed against one another. That is why even under the condition that my argument is sound and that excessive human rights-corresponding obligations are justified, I have not argued that moral agents should always and exclusively follow this call of duty or jettison all other obligations, plans and activities in their lives in order to dedicate all energy exclusively to fighting hunger, poverty, and suffering. While we have to make our reasoned moral choices, the moral obligations corresponding to ongoing human rights violations persist and are neither diminished nor eliminated by the fact that they may be extremely or unreasonably demanding.

All restrictions of human rights-corresponding obligations to a more convenient or more “reasonable” degree disrespect the legitimate claims of those whose important basic interests are violated and question the status of these interests as protected by a human right. Hence the appropriate response to a diagnosis of overdemandingness is to listen to the multiple obligations one may have and deal with them as well as possi-

ble. It is certainly not appropriate to deafen oneself or, in calling it a flaw of a theory, to pre-emptively exculpate oneself for failing to live up to them. Being incapable of fulfilling all duties does not disburden us from trying, even if in the end even well-intentioned moral agents will necessarily have to accept their at least partial, ongoing failure.

Bibliography

- Ashford, Elizabeth (2007): The Duties Imposed by the Human Right to Basic Necessities. In: Pogge (2007), 183–218.
- Beitz, Charles (2009): The Idea of Human Rights. Oxford: Oxford University Press.
- Caney, Simon (2007): Global Poverty and Human Rights: The Case for Positive Duties. In: Pogge (2007), 275–302.
- Feinberg, Joel (1980): The Nature and Value of Rights. In: Feinberg, Joel: Rights, Justice and the Bounds of Liberty. Essays in Social Philosophy. Princeton University Press, 159–184.
- Geuss, Raymond (2008): Philosophy and Real Politics. Princeton: Princeton University Press.
- Griffin, James (2008): On Human Rights. Oxford: Oxford University Press.
- Holmgren, Margaret (1985): Raz on Rights. In: *Mind* 94 (376), 591–595.
- Miller, David (2011): Taking Up the Slack? Responsibility and Justice in Situations of Partial Compliance. In: Knight, Carl/Stemplowska, Zofia (eds.): Responsibility and Distributive Justice. Oxford: Oxford University Press, 230–246.
- Murphy, Liam (2000): Moral Demands in Non-Ideal Theory. Oxford: Oxford University Press.
- Nickel, James (2010): Human Rights. In: Zalta, Edward N. (ed.): The Stanford Encyclopedia of Philosophy, Fall 2010 Edition: <<http://plato.stanford.edu/archives/fall2010/entries/rights-human/>>.
- O'Neill, Onora (2000): Bounds of Justice. Cambridge: Cambridge University Press.
- O'Neill, Onora (2005): The Dark Side of Human Rights. In: *International Affairs* 81 (2), 427–439.
- O'Neill, Onora (2009): Demandingness and Rules. In: Chappell, Timothy (ed.): The Problem of Moral Demandingness. Basingstoke: Palgrave Macmillan, 59–69.
- Pogge, Thomas W. (2007) (ed.): Freedom from Poverty as a Human Right. Who Owes What to the Very Poor? Oxford: Oxford University Press.
- Pogge, Thomas W. (2008): World Poverty and Human Rights, 2nd Edition. Cambridge: Polity.
- Raz, Joseph (1986): The Morality of Freedom. Oxford: Oxford University Press.

- Raz, Joseph (2007): Human Rights without Foundation. In: Oxford Legal Studies Research Paper 14. Available at: <<http://ssrn.com/abstract=999874>>.
- Ryan, Richard M./Deci, Edward L. (2000): Self-Determination Theory and the Facilitation of Intrinsic Motivation, Social Development, and Well-Being. In: *American Psychologist* 55 (1), 68–78.
- Sachs, Jeffrey (2005): *The End of Poverty: Economic Possibilities for Our Time*. New York: Penguin.
- Scheffler, Samuel (1994): *Human Morality*. Oxford: Oxford University Press.
- Scheffler, Samuel (2010): Morality and Reasonable Partiality. In: Scheffler, Samuel: *Equality and Tradition. Questions of Value in Moral and Political Theory*. Oxford: Oxford University Press, 41–75.
- Sen, Amartya (2004): Elements of a Theory of Human Rights. In: *Philosophy and Public Affairs*. 32 (4), 315–356
- Shue, Henry (1996): *Basic Rights. Subsistence, Affluence, and US foreign policy*, 2nd Edition. Princeton: Princeton University Press.
- Sobel, David (2007): The Impotence of the Demandingness Objection. In: *Philosophers' Imprint* 7 (8), 1–17.
- Vasak, Karel (1977): A Thirty-Year Struggle. The Sustained Efforts to Give Force of Law to the Universal Declaration of Human Rights. In: *UNESCO Courier* 30 (11), 29–32.
- Williams, Bernard (1981): *Moral Luck*. Cambridge: Cambridge University Press.
- Young, Iris Marion (2006): Responsibility and Global Justice: A Social Connection Model. In: *Social Philosophy and Policy* 23, 102–130.
- Ziegler, Jean (2001): *The Right to Food*. Report by the Special Rapporteur on the Right to Food, Mr. Jean Ziegler, submitted in Accordance with Commission on Human Rights Resolution 2000/10. Available at: <<http://www.righttofood.org/new/PDF/ECN4200153.pdf>> (accessed on July 25, 2011).